IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Civil Revision No. 429 of 2001
(Old No. 644 of 1988)

Date of decision:- 23-5-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:-23-5-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Revision No.429 of 2001
(Old No. 644 of 1988)

Madho Prasad Semwal
S/o Sri Bhagwati Prasad Semwal
Manoj Cloth Emporium Town & P.O.
Joshimath, District Chamoli ...Revisionist

Versus

Ram Sing Rana
S/o Shri Pratap Singh Rana
Nandadevi Hotel
Town & P.O. Joshimath
District Chamoli .....Respondent

Sri J.P. Joshi learned counsel for the revisionist.
Sri Pankaj Purohit learned counsel for the respondent.

Hon'ble J.C.S. Rawat, J.

1. The civil revision has been directed against the judgment and order dated 13.07.1988 passed by the District Judge, Chamoli in J.S.C.C. suit No.6/1987 Ram Singh Vs. Madho Prasad.

2. The plaintiff's case in a nutshell is that an ejectment suit was filed by the respondent-landlord against the revisionist-tenant on the ground of arrears of rent. It was alleged therein that the defendant-Madho Prasad was let out one room on the ground floor in the year 1979-80 on a monthly rent of Rs.200/ per month. In the month of August, 1981, it was agreed in between the parties that after fixing the shutters the revisionist (defendant-tenant) would pay the rent @ Rs.250/- per month and thus the said rent was payable from 01st November 1981. It was further alleged that a sum of Rs.9250/- became due to the plaintiff from the defendant on account of arrears of rent from the defendant on account of arrears of rent from 01.11.1981

to 30.11.1984. Besides this, the defendant had also purchased a parapet for a sum of Rs.858/- and thus a total sum of Rs.10,078/- became payable from the defendant. But, the revisionist-defendant had paid Rs.6852/-. After adjusting the said amount, a sum of Rs.3226/- remained balance for which the defendant had issued a cheque dated 29.03.1985 which was duly encashed and thus so far as accounts upto November 1984 are concerned, the same are settled between the parties. It was further alleged that the plaintiff made several requests to the defendant to pay the remaining amount of rent, but no heed was paid. It was further alleged that the defendant issued a cheque on 27.03.1986 for a sum of Rs.1800/- on account of the rent for the period from 01.12.1984 to 30.11.1985 after adjusting a sum of Rs.600/- being the cost of one truck bajri. The defendant remitted the rent @ Rs.200/- p.m. and consequently the said cheque was returned. The defendant was requested to remit full amount of the rent @ Rs.250/- p.m. from 01.12.1984 to 31.03.1986, which came to Rs.4000/-. The defendant was also requested to vacate the shop in question. He had again sent a cheque dated 22.05.1986 of Rs.200/- in part payment of the rent. When the plaintiff submitted the said cheque in the bank, it was dishonoured by the bank due to insufficient fund in the account. A sum of Rs.6750/- on account of arrears of rent from 01.121984 to 28.02.1987 became due on the defendant. A notice dated 12.03.1987 was sent to the defendant to pay the arrears of rent amounting to Rs.6750/- for the period from 01.12.1984 to 28.02.1987 @ Rs.250/- p.m. The said notice was served upon the defendant on 20.03.1987. Despite the service of notice, the defendant neither paid the arrears of rent nor vacated

the premises. Thereafter, the suit was filed for ejectment and arrears of rent.

3. The defendant had also filed the written statement in which he had stated the installation of the shutters was for the safety, and the shutters were provided by the plaintiff and after these complete repairs the rent was enchanced to Rs.200/- p.m. that the rent for the period from 01.11.1981 to 31.03.1985 at the rate of Rs.200/- p.m. was cleared by the last cheque dated 29.03.1985. He further stated that the truck of Bajri supplied to the plaintiff was worth Rs.600/- and on 27.03.1986 he sent a cheque of Rs.1800/- towards the rent due after adjusting the Bajri of Rs.600/-. It was further stated that the plaintiff returned this cheque with the ulterior motive to increase the rate or rent. The defendant further stated that he sent the letters to the plaintiff on 22.05.1986 & 28.06.1986 explaining his position, but the plaintiff refused to acknowledge the letter dated 28.06.1986 and thus he was forced to come to the court to deposit the rent and after sending the money order to the plaintiff-landlord. The defendant was allowed to deposit the rent for the period from 1.4.1985 to July 1987 in the court. On the directions of the court, the defendant sent two money orders one of Rs.2400/- before making the third deposit of the arrears of rent from January 1987 to July 1987. The defendant gave the written reply on 20.04.1987 to the notice of the plaintiff dated 12.03.1987.

4. The trial court framed necessary issues in the case and ultimately came to the conclusion hat the rate of rent between the parties was settled at Rs.250/- p.m. payable from November 1981 and thus the old rate of

rent of Rs.200/- p.m. settled in the year 1979 was enhanced and the rent rate was settled @ R.250/- p.m. payable from November 1981. The trial court had further held that the cost of the truck of Bajri supplied in August 1983 was Rs.425/- only and not Rs.500/-. The trial court has held that in view of the rate of rent was Rs.250/- p.m., all these payments and adjustments prove that the rent for the period upto 30.11.1984 was received by the plaintiff-landlord. The trial court had also held that the offer of the rent of the subsequent period has been refused by the plaintiff for sufficient cause. It was further held that as the defendant deposited the rent at a lower @ Rs.200/-pm. in place of the settled rate of Rs.250/- p.m. the defendant did not make a valid deposit of rent in the court and thus these deposits did not discharge the obligation of the defendant-tenant. So far as the demand notice of the arrears of rent @ Rs.250/- p.m. is concerned, the trial court had held that it was a lawful and valid demand and as the defendant failed to fulfill the demand of the arrears of rent made by the plaintiff and the tenancy was determined by the notice dated 12.03.19987. Lastly, the trial court had held that the plaintiff-landlord is entitled to claim the relief of the ejectment of the defendant from the premises in suit.

5. Learned counsel revisionist contended that the finding recorded by the trial court that the rate of rent was Rs.250 p.m. was not in accordance with the record. It was further contended that the trial court had misinterpreted and misread the evidence. It was further contended that the burden of proof lies upon the plaintiff to prove that the rent was enhanced form Rs.200 to Rs.250 in the year 1981. It was contended that the

defendant has been deprived of the facilities of electricity, bathroom and toilet which goes to corroborate that the shutters were installed in the shop and other facilities as indicated above were taken away. It was further contended that the rate of rent was Rs.200 p.m. and the said rent had been paid to the landlord. It was contended that the trial court had accepted that w.e.f. 1.11.1981 till 31.12.1983 the entire rent was paid and only a balance of Rs.226/- was due. The unrequited evidence of the defendant in this respect to the effect that an amount of Rs.5800/- was paid in cash has not been disbelieved. Learned counsel for the respondent refuted the contention. It has to be decided as to whether the rent was enhanced from Rs.200 to Rs.250 in the month of November 1981 or not. The plaintiff-respondent had examined himself before the court below as PW1. He has stated before the court that the rent was enhanced from Rs.200 to 250 in the month of November, 1981 after fixing the shutters in the shop. It was stated by him that the rent was paid at the rate or Rs.250 p.m. The plaintiff-respondent had corroborated the averment of the plaint in his evidence. The plaintiff respondent agreed to give the facility to the user of bathroom and latrine and the facility to use the electricity in his shop. He had furnished the details of payment made by the defendant-revisionist in the plaint and such details were proved in his evidence. In the rebuttal, the defendant had adduced his evidence as DW2. DW2-Madho Prasad Semwal had stated that one-Tilak Ram was the original tenant of the said shop and he left the said shop in the year 1979 and the shop was handed over to the revisionist. Thereafter, the rent was settled in between the respondent and the revisionist at the rate of Rs.200 per month in the year 1979. The

revisionist started the cloth business in the said shop in the year 1981 and the tenant-revisionist fixed an Almira in the said shop. It is not disputed that the shutters were installed in the said premises. It was only disputed that the cost of the said shutters was to be paid by the respondent or not. It is also in para one of the plaint that the said room was let out to the defendant revisionist at the rate of Rs.200/- p.m. in the year 1979 80 and defendant had admitted this fact in para 1 of the written statement. It is also in para 2 of the plaint that the rate of rent was enhanced from Rs.200 to Rs.250 in the year 1981 after providing shutters in the said room. He did not admit in para 2 of the plaint and stated that after the fixation of shutters and after completion of repairs the rent was enhanced to Rs.200/- p.m. only. Thus, the evidence of defendant is inconsistent with the pleadings. It is also admitted to the revisionist that the rent of Rs.200/-p.m. was agreed in between the parties in the year 1979 and it is also admitted to him that the rent was enhanced in the year 1981. If the version of the defendant is taken into account that the rent was Rs.200/- in the year 1979 then there was no question to enhance the rent from Rs.200 in the year 1981. Thus, this story of the defendant-revisionist is not believable. Meaning thereby, it is only disputed that what was the rate of rent. Perusal of the pleadings and evidence of the revisionist clearly reveals that the rent was fixed twice according to him. The revisionist tried to clarify this inconsistently by adducing a new case in the written statement that at the end of 1979 when the rent was settled at the rate of Rs.200 p.m. and the plaintiff agreed to give facilities of electricity, bathroom and toilet. When the shutters were provided in the shop, the plaintiff withdrew the aforesaid facilities. This fact has

not been mentioned in the pleadings and this case has been taken during the evidence. As such, there is a variance between the pleadings and the proof. The defendant had introduced this new case at the stage of evidence. When revisionist was to be examined before the court he experienced the above discrepancy in the written statement that he tried to explain it during the evidence. Thus, this version is an afterthought and to cover the discrepancy of the pleadings. If it was so he could have pleaded this fact in the written statement itself. As such, the evidence of defendant is not credible and cogent. The evidence of the plaintiff-respondent id totally consistent and reliable. The revisionist had filed the counterfoil of the cheque book which reveals that he had written in the counterfoil of the cheque that he had paid the rent at the rate of Rs.200/-. These entries had been made by the revisionist himself. There is nothing to show on record that these entries on the counterfoil of the cheque book was seen and approved by the plaintiff-landlord. The counterfoil always remains with the person who issued the chuques. The entry in the counterfoil of the cheque book could not help the defendant to show to prove the rate of rent.

6. The defendant-tenant had adduced the evidence of DW1-Dinesh Chandra Khanduri, who was the accountant of the co-operation bank. He stated that a cheque of Rs.3226/-was presented in the bank on 29.03.1985 and the some amount was paid to Ram Singh Rana-respondent on 29.03.1985. DW1 had also stated that Madhow Singh revisionist had made an endorsement on the back of the cheque that it contains an endorsement that he was paying Rs.3000/- as rent further period from 01.01.1984 to 31.12.1985 at the rate of Rs.200/-

p.m. He had also sent an amount of Rs.226/- which was due to him. It was further stated by DW1 Dinesh Chandra Khanduri-the clerk of the bank that the said cheque contained an endorsement that the rent is for the period of 15 months at the rate of Rs.200 p.m. It was pointed out that the writing was not at the normal place. Suggestions have been given to DW1 Dinesh Chandra Kahanduri That this endorsement has been made later on. It is pertinent to mention here that this fact has not been stated in the pleadings. If it was so, this fact would have been state in the written statements that the landlord had admitted that the rate of rent was Rs.200 p.m. by the said cheque. The trial court had held that three cheques sent by the defendant to the plaintiff towards the rent deserve notice. The defendant did not write any month and rate of rent on the back of the cheque of 1983 which he handed over to the plaintiff earlier. The endorsement made on the back of cheque dated 22.05.1986 relating the rate of rent and the month cannot be taken to be the details provided by the defendant-tenant to the plaintiff. The writing on the back of the cheque dated 22.05.1986 cannot be taken into account. The cheque dated 29.03.1985 given by the defendant-tenant to the plaintiff had the endorsement on the back of the cheque as deposed by the cashier of the bank Disnesh Chandra Khanduri DW1 that this cheque was fro the rent for the period from 1.1.1984 to 31.3.1985 for fifteen month. This writing was not at a normal place. The procedure was to give the plaintiff as accompanying account in writing with the cheque. Making an endorsement on the back of the cheque as stated by the defendant is an unsual act of the defendant, it cannot be considered that the plaintiff-landlord had the specific notice that he was being paid

the rent @ Rs.200/- p.m. The plaintiff-respondent PW1 had stated that he did not take notice of the endorsement on the back of the cheque and he simply singed and sent the cheque to the bank. The trial court had rightly held that the endorsement on the said cheque cannot be believed.

7. Perusal of the impugned judgment reveals that there is no perversity in the appreciation of the evidence. I am completely in agreement with the findings recorded by the trial court. Therefore, no interference is required with the findings in this case.

8. The revision devoids of merit and is dismissed accordingly. All the pending miscellaneous application(s) in this case, shall stand disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 23.05.2006

LSR